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October 1, 2002  
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12 St., S.W.  
Washington, D.C. 20554

**Re: Ex Parte, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128.**

Dear Ms. Dortch:

During a September 19, 2002 meeting with Jordan Goldstein of Commissioner Copps' Office, WorldCom presented initial estimates and summary data regarding the amount of payphone compensation expenses it was unable to recover beginning in 1998. Mr. Goldstein requested more detailed information regarding these data in order to better assess the equities of refunding Intermediate Period overpayments made by interexchange carriers (IXCs) to payphone service providers (PSPs). This letter is a redacted version of a confidential filing, also filed today. The confidential version provides a detailed explanation of the unrecovered costs associated with WorldCom's role administering payphone compensation.

In various Ex Partes, the American Public Communications Council (APCC) contends that IXCs have fully recovered their payphone compensation payments to PSPs and that any refund to them for overpayments they made during the Intermediate Period would result in a windfall.<sup>1</sup> In fact, WorldCom has not recovered its payphone compensation expenses, as this letter documents. These unrecovered expenses balance the purported inequities reported by APCC. If the Commission were to aggregate the unrecovered expenses incurred by the major carriers, WorldCom, AT&T and Sprint, they would dwarf those reported by APCC.

WorldCom identifies three sources of unrecovered and unrecoverable expenses: 1) inability to surcharge for Interim Period payments made on behalf of switchless and switch-based reseller customers, 2) inability to surcharge reseller customers for per-phone payments made to payphone ANIs from which Flex ANI was unavailable' during the per-call period, and 3) payphone

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<sup>1</sup> See, , Letter from Robert Aldrich to Marlene Dortch, CC Docket No. 96-128, dated August 23, 2002, Letter from Robert Aldrich to Marlene Dortch, CC Docket No. 96-128, dated May 23, 2002, and Letter from Robert Aldrich to Marlene Dortch, CC Docket No. 96-128, dated April 25, 2002, CC Docket No. 96-128.

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administration expenses not included in its \$.26 cent per-call surcharge. In total, WorldCom will have been unable to recover \$ REDACTED . WorldCom expects similar unrecovered expenses for Sprint, and substantially larger ones for AT&T.

There is no doubt that IXC's' unrecovered payphone compensation expenses dwarf those identified by APCC. Therefore, even if the Commission were to reject the analyses of AT&T, Sprint and WorldCom submitted on July 2, 2002 and October 1, 2002,<sup>2</sup> and both balance the losses of independent PSPs against those of IXC's and also rely on APCC's estimates of Early Period losses, an objective consideration of IXC losses will lead the Commission to affirm its decision to require PSPs to refund IXC overpayments made during the Intermediate Period.<sup>3</sup>

### **WorldCom Is Unable To Surcharge For Interim Period Payments**

In its First Report and Order, the Commission limited Interim Period Compensation to carriers with annual revenues in excess of \$100 million.<sup>4</sup> The Court of Appeals for the District of Columbia remanded this decision back to the Commission, stating that the Commission acted arbitrarily and capriciously by requiring Interim Period payments only from large IXC's.<sup>5</sup> WorldCom estimates that its switchless reseller customers comprise approximately REDACTED percent of its compensable payphone traffic and its switch-based resellers comprise approximately REDACTED percent of its compensable payphone traffic. Due to the absence of Flex ANI during the Interim Period, WorldCom was unable to surcharge any of its customers for Interim Compensation in the past. Moreover, WorldCom's contracts with its reseller customers do not allow for surcharges to be imposed for payphone compensation payments earlier than 90 days from the billing date.

The Commission determined that Interim Compensation would be paid at a rate of \$.229 per call on a base of 148 access code and subscriber calls per month.<sup>6</sup> The per phone payment would therefore be \$33.89 per month for each of the 11 months of the Interim Period. Using data submitted in this docket on the volume of calls routed to each carrier's carrier identification codes (CICs) WorldCom estimates it could be allocated as much as a REDACTED market share in the Commission's soon-to-be-released Allocation Order.<sup>7</sup> On a base of approximately REDACTED

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<sup>2</sup> Joint Ex Parte Letters, AT&T, Sprint, WorldCom, July 2, 2002, and October 1, 2002, CC Docket No. 96-128.

<sup>3</sup> See Third Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 14 FCC Rcd 2525, CC Docket No. 96-128, February 1999.

<sup>4</sup> In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541, CC Docket No. 96-128, CC Docket No. 91-35, September 1996, at &119.

<sup>5</sup> *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997).

<sup>6</sup> Fourth Order on Reconsideration and Order on Remand, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 17 FCC Rcd 2020, July 2002, at & 11.

<sup>7</sup> See Letters from Marie Breslin, Verizon, to Magalie Roman Salas, January 22, 2002, CC Docket No. 96-128, Michael Yoest, SBC, to Magalie Roman Salas, CC Docket No. 96-128, W.W. Jordan, BellSouth, to William Caton, March 29, 2002, CC Docket No. 96-128, and Michael Yoest, SBC to William Caton, CC Docket No. 96-128.

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payphones<sup>8</sup>, and recalling that WorldCom's resellers comprise REDACTED of its compensable payphone traffic, WorldCom will have been required to compensate PSPs approximately \$ REDACTED , which it will be unable to recover through surcharges to its customers.

<b>Table 1</b>					
<b>Unrecoverable Interim Period Expenses</b>					
<b>\$ Per Phone Per Month</b>	<b>Months in Interim Period</b>	<b>WorldCom's Market Share</b>	<b>Resellers' Share of WorldCom's Payphone Calls</b>	<b>Payphones</b>	<b>Unrecoverable Interim Compensation</b>
( <b>\$</b> )		( <b>%</b> )	( <b>%</b> )	( <b>million</b> )	( <b>\$million</b> )
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The primary unrecoverable payphone compensation expense identified in this letter is due to the Commission's decision in its recent Fourth Reconsideration Order to require underlying carriers to pay Interim Period compensation on behalf of their switch-based resellers. Given that WorldCom and other underlying carriers, such as Sprint and AT&T, are unable to surcharge such customers for Interim Period calls, the Commission's decision poses a grave hardship for underlying carriers and must be reconsidered. WorldCom has asked the Commission to make switch-based reseller customers with CICs directly responsible for their share of Interim Period compensation.<sup>9</sup>

**WorldCom Was Unable To Surcharge For Per-Phone Payments Made To Payphone ANIs From Which Flex ANI Was Unavailable**

The Commission expected local exchange carriers (LECs) to have implemented Flex ANI by the beginning of the Intermediate Period (October 1997).<sup>10</sup> However, Flex ANI remained only partially implemented through 2000. Consequently, carriers were unable to compensate PSPs on a per-call basis for calls made from payphones that did not transmit payphone specific coding digits.

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<sup>9</sup> WorldCom, Reply to Comments on Petitions for Reconsideration of the Fourth Order on Reconsideration and Order on Remand, CC Docket No. 96-128, filed May 15, 2002.

<sup>10</sup> First Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd at 20541, September 1996, &119.

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The Commission allowed carriers to make “surrogate” payments using an estimate of the dial around calls made from dumb payphones transmitting the “27” payphone specific coding digit.<sup>11</sup>

WorldCom made approximately \$ REDACTED million surrogate payments for 1997, \$ REDACTED million surrogate payments for 1998, \$ REDACTED million for 1999, and \$ REDACTED million for 2000, for a total of \$18 million. Because there is no per call tracking information associated with these payments, WorldCom did not have any way to identify the calls from these payphones. Consequently, WorldCom has not surcharged its customers for \$18 million. This would amount to a \$26.7 million loss if an annual 8% interest rate were applied.

<b>Table 2</b>		
<b>Unrecoverable Expenses Since 1997 Due To Absence Of Flex ANI</b>		
<b>Year</b>	<b>\$ Million</b>	<b>With Interest \$Million</b>
1997	REDACTED	
1998		
1999		
2000		
<b>Total</b>	<b>18.10</b>	<b>26.60</b>

### **WorldCom Has Only Partially Recovered Its Payphone Administration Expenses**

Beginning with the Intermediate Period, WorldCom has made considerable investments and incurred substantial annual recurring costs to develop its payphone tracking, compensation, and billing systems.

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<sup>11</sup> Memorandum Opinion and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 13 FCC Rcd 10893, April 3, 1998, at & 21.

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<b>Table 3</b>					
<b>Unrecovered Payphone Administration Expenses</b>					
Year	Calls	Cost	Cost/Call	Loss	Loss w/ Interest
1998	<b>REDACTED</b>				
1999					
2000					
2001					
<b>Total</b>					

## Conclusion

APCC has submitted letters claiming its members have not recovered over \$100 million in payphone compensation. Most of this amount is attributable to estimates of compensation that might have been paid had the Commission compensated PSPs for 800-subscriber traffic between 1992 and 1996. In its October 1, 2002 joint Ex Parte letters, AT&T, Sprint, and WorldCom show that not only are APCC's estimates of unrecovered payments prior to 1996 inflated and unreliable, but the Commission would be committing reversible error were it to rely on these estimates.<sup>12</sup> In the event the Commission rejects this analysis an objective consideration of IXC losses will still lead the Commission to require PSPs to refund IXC overpayments made during the Intermediate Period. WorldCom urges the Commission to affirm its decision in the Third Report and Order, and require PSPs to refund overpayments IXCs made during the Intermediate Period.

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<sup>12</sup> Joint Ex Parte Letters, AT&T, Sprint, WorldCom, July 2, 2002, and October 1, 2002, CC Docket No. 96-128.

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Sincerely,

**Larry Fenster**

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